* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : May 18, 2007
Date of Decision : May 28, 2007

\+ W.P. (C) 5745/2003 & CM No.9681/2006.

M/S DHAWAN TIMBER STORE ..... PETITIONER
Through : Mr. Rajiv Behl, Advocate.

versus

D.D.A. .... RESPONDENT
Through: Mr. Sachin Chopra, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. The petitioner seeks a mandamus to the Respondent Delhi Development Authority ('DDA') "to execute the perpetual lease deed/title deed in favour of the Petitioner with respect to the plot bearing No. 101/C, Block-1, Kirti Nagar, WHS, New Delhi-110015 immediately."

2. The petitioner is a partnership firm in the business of sale and purchase of timber and timber products at Pul Mithai, Delhi on land belonging to the Railways. The petitioner claims it was paying an annual rent to the Northern Railway. The petitioner was asked to vacate the land since it was required for widening the railway bridge

on that place. In the alternative, the petitioner was allotted a piece of land measuring 200 sq. yards at plot No.101/C, Block-1, Kirti Nagar under the scheme devised for the said project. Although the formal allotment was made on 15.3.1983, the possession of the plot was handed over to the petitioner on 6.5.1982. The petitioner paid Rs.3,000/- for the premium on the plot and another sum of Rs.2025/- on 6.1.1984.

3. By a demand letter dated 2.12.1991 the DDA required the petitioner to pay premium and interest calculated up to 6.1.21991 amounting to Rs.73245/-. The petitioner challenged this demand notice filing Suit No.182 of 1993. This was dismissed on 5.10.2001 by the Civil Judge, Delhi who held that the demand notice dated 2.12.1991 was valid.

4. The DDA thereafter sent a fresh demand notice dated 21.1.2002 withdrawing its earlier demand dated 2.12.1991 and informing the petitioner that it was liable to pay Rs.1,89,968/- after adjusting the amount of Rs.39,141/- already paid by the petitioner. Payment was to be made within 30 days. In compliance with this notice the petitioner paid the entire amount together with interest in the sum of Rs.2,17,043/- by a cheque dated 28.10.2002. The petitioner states that despite making the payment no perpetual lease deed or title deed was issued to the petitioner by the DDA.

5. The petitioner's case is that the payment of Rs.2,17,043/- on 28.10.2002 was made under protest since according to the petitioner it was not liable to pay premium at the rate of Rs. 1327 per sq.m but Rs.25/- per sq. m. as was demanded from the evictees of other areas

who had been allotted alternative land. A notice was issued through its lawyer on 2.4.2003 asking the DDA to execute the title deed/perpetual lease deed. The petitioner states that its building plans have not been cleared by the MCD on the ground that the petitioner was required to submit the copy of the ownership document and to show the original of such documents. Accordingly the petitioner filed this writ petition on 21.8.2003.

6. In its reply filed to the writ petition, the DDA contends that the delay in making payment against the original demand notice dated 15.9.1983 at Rs.1237 per sq.metre was entirely that of the petitioner and therefore the DDA was not at fault in demanding premium and interest for the plot in question. It was explained that the notice dated 21.1.2002 was issued on the basis of the rates of premium of 1983 in order to "cut short all the controversies." It is not denied that the petitioner made the entire payment pursuant to this demand letter. A reference is made to a policy decision, which is not explained. It is stated in terms of the said policy decision, a letter was sent to the petitioner stating that in continuation of the demand notice dated 21.1.2002, the petitioner was required to deposit Rs.8,87,972 being the ground rent from the date of possession up to 14.7.2003 plus interest on the said amount. A mention is also made of payment of composition fee for belated construction. The said amount was asked to be deposited with the DDA within 60 days of the issuance of the said notice.

7. In the rejoinder the petitioner, pointed out that the DDA had not given the date of the subsequent letter and also had not mentioned the rate of interest. The petitioner maintained that it had paid the

entire amount as demanded by the notice dated 21.1.2002 and therefore the DDA was "estopped from claiming any amount from the petitioner."

8. Mr. Rajiv Behl, learned Advocate for the petitioner submits that there was no justification for the DDA not to execute the perpetual lease deed in favour of the petitioner in respect of the plot in question when the entire payment as demanded in the notice dated dated 21.1.2002 had in fact been made to the DDA. The subsequent demand was not received by the petitioner. In any event the subsequent demand was illegal since it was not open to the DDA to keep revising the demand time and again without any basis and without any authority to do so. Appearing for the DDA, Mr. Sachin Chopra learned Advocate pointed out that the letter dated 21.1.2002 refers to an earlier letter dated 15.3.1983 by which the petitioner was liable to pay premium in the sum of Rs.1327 per sq.metre which worked out to Rs.2,21,909/-. He submitted that the conditions stipulated in that letter dated 15.3.1983 were not withdrawn. He claimed that the demand dated 31.10.2003 specifying the ground rent and interest from the date the petitioner was put in possession was in fact delivered to the petitioner.

9. On 9.5.2007 the Court passed the following Order:

> "1. Mr. Behl, learned counsel for the petitioner has been heard in part.
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> 2. There is no dispute that the entire amount payable in terms of the letter dated 21.1.2002 together with interest applicable, has been paid by the petitioner. The only reason given by the DDA for not executing the Lease Deed in favour of the petitioner, is that as per the letter stated to have been

issued to the petitioner on 3.10.2003 an amount for the ground rent and interest thereon for the period during which the petitioner has been in occupation of the property, in question remains to be paid.

3. Counsel for the respondent-DDA states that the said letter has not yet been placed on record, and seeks leave to produce the record to show that such a demand letter was in fact delivered to the petitioner. Counsel for the DDA will also explain to the Court the basis on which a demand can be raised for ground rent and interest, and the limitation for raising such demand.

4. List on 18.5.2007."

10. Following the above Order the DDA has filed an affidavit on 17.5.2007 in which it is claimed that the letter in question was issued. The affidavit is silent on the aspect of delivery of this letter dated 31.10.2003 was delivered to the petitioner. However the DDA is also unable to produce any document to show that the demand was in fact served upon the petitioner. The explanation for not raising the demand for the ground rent earlier is that till the premium for the land was departed, the interest on the ground rent could not be calculated. The Court does not find this explanation acceptable considering that what is now sought to be done is to recover ground rent from 1982 onwards, in one go, nearly 20 years after the petitioner was put in possession of the plot in question.

11. The Court is unable to appreciate how the DDA could delay the execution of the perpetual lease deed after the petitioner had made the full payment as demanded by the DDA by its notice dated 21.1.2002. The wording of the said demand notice indicates that the

earlier demand stands superceded. A reference is also made in this letter to the earlier letter dated 15.3.1983 and yet, in this letter (i.e. the letter dated 21.1.2002) no demand for ground rent or interest thereon has been made. The entire text of the letter dated 21.1.2002 reads as under:

"No. F.19(5)82/LSB(I)
From Dy. Director (INDL) New Delhi-110023 21/1/2002

To,
Sh. Kanwal Nain Dhawan,
Prop. of M/s Dhawan Timber Store,
Plot No.101/C, Block-I,
Kirti Nagar, W.H.S.,
New Delhi-110015.

Sub: Regarding demand of premium in respect of Plot No.101/C Block-I, Kirti Nagar, W.H.S.

In connection with your above noted case, I am directed to inform you that you are liable to pay premium of above noted plot @ Rs.1327/- per sq. metre, the total of which comes to Rs. 2,21,909/- as already communicated to you vide this office letter No. F.19(5)82/LSB(I) dated 15.3.1983. The demand letter No. 1300 dated 2.12.1991 for Rs.73,425/- earlier issued to you by this office may please be treated as concelled/withdrawn.

Now you are liable to pay a sum of Rs.1,89,968/- as per the details given below:-

200 Sq.yards or 163.226 sqm @ Rs. 1327/- per Sq.Mtrs.
Rs.2,21,909.00

Less already paid including the demand
of non-verified payment of
Rs.3,000/- of 11/67 Rs. 31,941.00
Rs.1,89,968.00

The proof of payment of non-verified payment of Rs.3000/- if made by you, may also please be furnished otherwise you will have to make the payment of Rs.3000/- in addition to the above demand of Rs.1,89,968/-. The above payment may please be made within (30days) from the date of issue of this letter positively, failing which action to cancel the allotment will be taken by this office. Please also take note that interest @ 18% on belated payment is also payable by you up to the date of final payment to be made by you.

Sd/-/21-1-02
Deputy Director (INDL.)
D.D.A. Vikas Sadan
I.N.A, New Delhi."

12. There is much force in the contention of the learned counsel for the petitioner that having restricted the demand to the sum mentioned in this letter and having accepted the payment made by the petitioner consequent thereto on 28.1.2002, it was not open to the DDA to revise its demand seeking to recover the ground rent and interest thereof. The petitioner was obviously not able to raise any construction since the absence of perpetual lease deed meant that MCD would not sanction the building plan. Although the letter dated 31.10.2003 makes no mention of any composition fee, it is plain that in the circumstances narrated hereinbefore, such demand would be untenable. Also, it is inunderstandable how the DDA could wait till 2003 to recover ground rent from 1982 onwards.

13. For all of the above reasons, the Court finds no justification in the DDA not executing the perpetual lease deed in favour of the petitioner. The petition is entitled to succeed.

14. A mandamus is issued to the DDA to execute the perpetual lease deed/title deed in favour of the petitioner with regard of plot No. 101/C Block-I, Kirti Nagar, WHS, New Delhi 110015, within a period of four weeks from today and in any event not later than 27.6.2007. The DDA will also pay to the petitioner costs of Rs.5,000/- within a period of four weeks from today. With these directions, the writ petition is allowed. The application is disposed of.

S. MURALIDHAR, J.

May 28, 2007
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